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EMBASSY KYIV FOR LEGATT (DSHEPARD)
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SUBJECT: BELARUS: 2009-2010 INCSR PART II: MONEY LAUNDERING AND FINANCIAL CRIMES

REF: STATE 114962

¶11. Summary. Belarus is not a regional financial center. A general lack of transparency throughout the financial sector means that assessing the level of potential for money laundering and other financial crimes is difficult. Corruption (including embezzlement through abuse of office, taking bribes, and general abuses of power) and illegal narcotics trafficking are primary sources of illicit proceeds. Due to excessively high taxes, underground markets, the dollarization (US\$) and the eurozation (Euro) of the economy, a significant volume of foreign-currency cash transactions eludes the banking system. Shadow incomes from offshore companies constitute a portion of foreign investment. Smuggling is widespread. Corruption is a serious problem in Belarus, which hinders law enforcement and impedes much-needed reforms. Economic decision-making in Belarus is highly concentrated within the top levels of government. Recent decrees, although substantially liberating the country's business climate, have nevertheless left all major economic levers in the hands of the president and the GOB. End Summary.

¶12. Belarus is not considered an offshore financial center, and offshore banks, shell companies, and trusts are not permitted. As of November 1, 2009, 32 banks with 264 branches comprised the banking sector. Of these, 25 were banks with foreign capital, including 9 banks with 100 percent foreign capital. There are currently eight offices of foreign banks, including those with headquarters in Germany, Latvia, Lithuania, Russia and Ukraine, and a representative office of the CIS Interstate Bank. Nevertheless, the assets of Belarus' three largest state-owned banks, Belarusbank, Belagroprombank, and Belinvestbank, account for 65-70% of all assets of the country's banking sector. Banks and branches have separate business units such as payment processing centers, banking service centers, and foreign exchange offices. In February 2006, the government abolished the 1997 identification requirements for all foreign currency exchange transactions at banks. Nonbank financial credit institutions have gradually closed, due to money laundering concerns and other factors.

¶13. Based on a 1996 Presidential Decree, Belarus has established one free economic zone (FEZ) in each of Belarus' six regions. The president creates FEZs upon the recommendation of the Council of Ministers and can dissolve or extend the existence of a FEZ at will. The Presidential Administration, the State Control Committee (SCC), and regional authorities supervise the

activities of companies in the FEZs. According to the SCC, applying organizations are fully vetted before they are allowed to operate in an FEZ in an effort to prevent money laundering and terrorism finance. Presidential Decree 66 has tightened FEZ regulations on transaction reporting and security, including mandatory installation of video surveillance systems. A 2005 National Bank resolution changed the status of banks in the zones by removing special provisions. Banks in the zones are currently subject to all regulations that apply to banks outside the zones.

¶4. In 2009, citing official sources, the local media reported several cases of attempts to smuggle undeclared cash across borders. Belarus uses customs declaration forms at points of entry and exit to fulfill cross-border currency reporting requirements for both inbound and outbound currency. Upon entry into or departure from the country, travelers must declare in writing any sum over \$3,000. Travelers departing Belarus with sums exceeding \$10,000 are required to secure permission from the National Bank to carry that amount of currency. However, the declaration system was not designed, nor is it used to detect the physical cross-border movement of currency and bearer negotiable instruments to prevent and interdict bulk cash smuggling for money laundering and terrorist financing purposes.

Individuals may import or export securities certificates denominated in foreign currencies and payment instruments in foreign currencies without any limitations on the amount, and without the need to declare them in writing to the customs authorities. Customs authorities do not store information on declarations that they consider suspicious and are unable to apply sanctions against persons moving funds cross-border on the basis of suspicion of money laundering or terrorist financing. New Customs regulations were reportedly drafted but were not adopted in 2009 to allow customs authorities to exert tighter

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control over individual import and export of payment instruments in foreign currencies. However, neither the details nor the time period for the adoption of new regulations were made public.

¶5. The Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG), a Financial Action Task Force (FATF)-style regional body, evaluated the anti-money laundering and counterterrorist financing (AML/CTF) regime of Belarus in July 2008. The EAG adopted the mutual evaluation report (MER) at the December 2008 plenary meeting. The major deficiencies outlined in the MER focused on certain issues, which Belarus' National Bank and the GOB partially addressed in 2009. In an effort to establish adequate customer due diligence (CDD) requirements, the National Bank issued a resolution in June 2009 obliging all Belarusian banks to establish an electronic client database and refer each client to a certain risk category. Electronic cash accounts in fictitious names have been allowed only for transactions under \$1,105 per day. Another EAG concern - a clear requirement to perform CDD on establishing business relations with a customer in the banking, insurance and securities sectors - was reportedly addressed in the bill, which will amend the country's AML law. The bill had a successful first reading in the parliament in 2009 and is expected to be adopted in March 2010. The bill is not expected to address the requirement for CDD for legal entities below the (\$246,000) threshold. The National Bank resolution has reportedly introduced an affirmative obligation to identify beneficial ownership in the banking sector. Beneficial ownership or ongoing monitoring requirements for other sectors and lack of effective regulation and supervision for correspondent accounts and designated nonfinancial businesses and professions (DNFBPs) were reportedly fully addressed in the bill. Inadequate record keeping requirements and inadequate wire transfer identifier requirements were addressed in the NB's resolution. For steps taken to correct shortcomings in the Belarusian cross-border cash declaration regime see above.

¶6. By law, only licensed banks and the postal service can conduct money transfers. The government does not acknowledge alternative remittance systems and allows currency exchange only

through licensed currency exchange kiosks. The Department of Humanitarian Assistance in the Presidential Administration registers all charities. Presidential Decree 24, passed in 2003, requires all organizations and individuals receiving charity assistance, including assistance provided by foreign states, international organizations and individuals, to open charity accounts in a local bank.

17. Belarus' "Law on Measures to Prevent the Laundering of Illegally Acquired Proceeds" (AML Law), adopted in 2000, amended in 2005 and to be further amended in 2010, establishes the legal and organizational framework to prevent money laundering and terrorist financing. The AML/CTF law does not fully incorporate the requirements of the Vienna and Palermo Conventions (e.g., acquisition, possession or use are not covered, nor are indirect proceeds). Belarus criminalizes self-laundering, but restricts the self-laundering offense to cases that involve using the illicit proceeds to carry out entrepreneurial or other business activities. Belarus also criminalizes the financing of terrorism. Although Belarus has adopted an all crimes approach to money laundering predicates, with some exceptions for tax evasion crimes, it does not criminalize insider trading and market manipulation, and therefore does not meet FATF requirements for the minimum list of predicate offenses. A money laundering conviction does not require conviction of the predicate offense. Legal entities are not criminally liable and there also is no administrative liability of legal entities for money laundering. However, if a legal entity aids an organized group or criminal organization or is created with funds of an organized group or criminal group, it can be liquidated by the Supreme Court of Belarus and its assets seized by the state. The criminal code provides adequate sanctions for individuals convicted of money laundering, including fines and incarceration for two to four years. For repeated crimes, or for crimes involving sums equal to or above \$12,280 or for crimes committed by an organized group the incarceration sentences are four to ten years. The law defines "illegally acquired proceeds" as currency, securities or other assets, including real and intellectual property rights, obtained in violation of the law.

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18. All financial institutions are obligated to report suspicious transactions regardless of value, and large value transactions, for which the reporting threshold for individual financial transactions is approximately \$24,600 and for corporate transactions is approximately \$246,000. However, Belarusian banks were exempt from the latter requirement by the presidential edict 601 signed on November 4, 2008. The same edict introduced a requirement for banks to identify one-time clients with transactions equal or exceeding \$12,280. In Belarus, these reporting obligations attach to transfers that are subject to special monitoring. Specifically, transactions subject to special monitoring include: transactions whose suspected purpose is money laundering or terrorist financing; cases where the person performing the transaction is a known terrorist or controlled by a known terrorist; cases in which the person performing the transaction is from a state that does not cooperate internationally to prevent money laundering and terrorist financing. Transactions exceeding the currency reporting threshold of \$12,280 that involve cash, property, securities, loans or remittances presuppose identification requirements. Financial institutions conducting such transfers are required to disclose to the FIU--the Department of Financial Monitoring (DFM)--within one business day the identity of the individuals and businesses ordering the transaction or the person on whose behalf the transaction is being placed, information about the beneficiary of a transaction, and account information and document details used in the transaction. Bank officials who violate the law face fines, and banks may have their licenses suspended for up to one year. However, the AML Law exempts most government transactions and those sanctioned by the President from reporting requirements. The government has used the AML Law as a pretext for preventing several pro-democracy NGOs from receiving foreign assistance.

¶9. The AML Law authorizes the following government bodies to monitor financial transactions for the purpose of preventing money laundering: the State Control Committee (SCC); DFM; the Securities Committee; the Ministry of Finance; the Ministry of Justice; the Ministry of Communications and Information; the Ministry of Sports and Tourism; the Committee on Land Resources; the Ministry on Taxes and Duties (MTD); and other state bodies. The MTD also provides oversight and has released binding regulations on its subject institutions. Under the SCC, the Department of Financial Investigations, in conjunction with the Prosecutor General's Office, has the legal authority to investigate suspicious financial transactions and examine the internal rules and enforcement mechanisms of any financial institution.

¶10. In January 2005, the President signed a decree on the regulation of the gaming sector, imposing stricter tax regulations on owners of gaming businesses. In addition, a provision intended to combat money laundering requires those participating in gaming activities to produce identification to receive winnings. However, casinos do not need to address AML/CTF issues before receiving operating licenses, and the system for supervising and applying sanctions for noncompliance with AML/CTF requirements is not effective. Belarus has shortcomings similar to other DNFBPs: there is little effective monitoring for compliance with AML/CTF measures for most of these sectors, and accountants lack a supervisory agency--even a self-regulating organization--so they completely lack supervision and monitoring. Across sectors, there is no clear customer identification requirement for DNFBPs at the establishment of the business relationship, there are no beneficial ownership identification requirements (except for banks), and exceptions in the reporting requirements mean that there may be times that DNFBPs do not perform client identification measures even when they suspect the client of involvement in money laundering or terrorist financing. These sectors also lack the legal obligation (again except for banks) to execute enhanced CDD measures for high-risk clients. Likewise, Belarus has no requirements for these sectors to obtain information from the customer regarding his or her source of funds or the expected purpose of the business relationship. The MER notes an overall lack of implementation across these sectors, in particular, the absence of effectiveness in the gaming sector, as well as with regard to dealers in precious

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metals and stones.

¶11. In 2003, Belarus established the DFM as its financial intelligence unit (FIU). Although it is an autonomous unit within the State Control Committee of Belarus with the rights of a legal entity, it does not have an independent budget and cannot independently hire staff. As the primary government agency responsible for gathering, monitoring and disseminating financial intelligence, the DFM analyzes financial information for evidence of money laundering and forwards it to law enforcement officials for prosecution. The DFM also has the power to penalize those who violate money laundering laws and suspend the financial operations of any company suspected of money laundering or financing terrorism. The DFM cooperates with counterparts in foreign states and with international organizations to combat money laundering, and since 2007 it is a member of the Egmont Group. The DFM also has the authority to initiate its own investigations.

¶12. The DFM has noted that there is increased interest by law enforcement in the FIU's work. Belarusian legislation provides for broad seizure powers for law enforcement to identify and trace assets. The Criminal Code provides for asset forfeiture for all serious offenses, including money laundering. Seizure of assets from third parties appears possible but is not specifically codified. The seizure of funds or assets held in a bank requires a court decision, a decree issued by a body of inquiry or pre-trial investigation, or a decision by the tax authorities.

¶13. Belarus has focused on targets beyond money laundering. In June 2007 Parliament passed Criminal Code amendments to toughen penalties for various offenses by officials, including larceny through abuse of office, embezzlement, and legalization of assets illegally obtained. In July 2007, President Lukashenka issued an edict mandating the formation of specialized departments within prosecutors' offices, police stations and the KGB to fight against corruption and organized crime. Despite recent legislation, corruption remains a serious obstacle to enforcing laws dealing with financial crimes.

¶14. Belarus has made an effort to ensure cooperation and coordination between state bodies through the Interdepartmental Working Group established specifically to address AML/CTF issues. This Working Group includes representatives of the Prosecutor's office, the National Bank, MTD, State Security Committee, Department of Financial Investigation, and the DFM. The Director of the DFM serves as the head of this Group.

¶15. Terrorism is a crime in Belarus and the willful provision or collection of funds in support of terrorism by nationals of Belarus or persons in its territory constitutes participation in terrorism by aiding and abetting. Article 290-1 of the Criminal Code explicitly criminalizes terrorist financing. However, the law does not criminalize indirect provision of money for purposes of terrorist financing and does not criminalize provision of funds for a terrorist organization or an individual terrorist, if the funds are not intended for a specific act of terrorism. The Criminal Code also does not criminalize the financing of theft of nuclear materials for terrorist purposes. Legal entities are not criminally liable for terrorist financing, but organizations engaged in the financing of terrorism may be liquidated by decision of the Supreme Court upon indictment by the General Prosecutor. In December 2005, the Parliament amended the Criminal Code to stiffen the penalty for the financing of terrorism. The amendments explicitly define terrorist activities and terrorism finance and carry an eight to twelve year prison sentence for those found guilty of sponsoring terrorism. In February 2006, the Interior Ministry announced the establishment of a new counterterrorism department within its Main Office against Organized Crime and Corruption.

¶16. Belarus does not have an adequate system in place to freeze without delay terrorist assets. The AML/CTF (Article 5) requires financial institutions and DNFBPs to suspend a financial transaction if one of its participants is a person suspected of being involved in terrorist activities or controlled by terrorists. The National Bank provides banks with the State Security Committee's lists of persons suspected of

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being involved in terrorist activities or controlled by persons engaged in terrorism--including persons on the United Nations Security Council Resolution (UNSCR) 1267 Sanctions Committee's consolidated list--and has given banks and nonbank credit institutions an instruction on the procedure for freezing funds.

DNFBPs do not receive the terrorism lists and have little awareness of freezing requirements. In addition, the AML/CTF law (Article 11) also authorizes the Financial Monitoring Department to suspend a transaction for up to five days, after which time it must decide either to report the information to law enforcement, which can attach the funds, or resume the transactions. In accordance with a resolution passed in March 2006, the Belarusian KGB compiled a list of 221 individuals suspected of participation in terrorism, which the National Bank distributed to all domestic banks. Belarus has no procedures in place for reviewing requests to remove persons from the list or for unfreezing the funds of persons to whom the freezing mechanism was accidentally applied.

¶17. Belarus is a party to the 1988 UN Drug Convention, the UN Convention for the Suppression of the Financing of Terrorism, the UN Convention against Transnational Organized Crime, and the UN Convention against Corruption. Belarus has signed bilateral treaties on law enforcement cooperation with Afghanistan, Bulgaria, India, Latvia, Lithuania, the People's Republic of

China, Poland, Romania, Syria, Turkey, the United Kingdom, and Vietnam. In September 2006, Belarus signed an AML agreement with the People's Bank of China. In 2009, Belarus' Department of Financial Monitoring signed an AML agreement with their Macedonia counterparts. The United States and Belarus do not have a mutual legal assistance agreement in place. Belarus is a member of the EAG. The DFM is a member of the Egmont Group. Belarus is ranked number 139 (up from 151 a year ago) out of 180 territories listed in Transparency International's 2009 International Corruption Perception Index.

¶18. The Government of Belarus (GOB) has taken steps to construct a legal and regulatory framework to fight money laundering and terrorist financing. It should also focus on the implementation of the law by law enforcement, increasing the investigation and prosecution of money laundering and terrorist financing offenses. This could be accomplished through training and outreach by the FIU and other regulators. Belarus should increase the transparency of its business, finance, and banking sectors. Belarus' AML legislation should be further amended to comport with international standards and to provide for more transparency and accountability. The GOB should, for example, extend the application of its current AML legislation to cover the governmental transactions that are currently exempted under the law, and ensure that the regulations and guidance provided by the National Bank and other regulators are legally binding. Similarly, the National Bank should be given the authority to carry out its responsibilities, and not be subject to influence by the Presidential Administration. The GOB should also bring the nonfinancial sectors under the same AML/CTF requirements that it imposes on the financial sector, and ensure resources for supervision, monitoring and a sanctions regime for noncompliance. The GOB should implement strict regulation on its industries operating abroad and on those operating within the FEZ areas. The GOB needs to reinstate the identification requirement for foreign currency exchange transactions, and reconsider the relationships it wishes to foster with state sponsors of terrorism. Belarus should continue to hone its guidance and enforcement of suspicious transaction reporting and provide adequate staff, tools, training and financial resources to its FIU so that it can operate effectively, especially with the increased attention and reporting that the DFM has generated of late. The GOB must work to further improve the coordination between agencies responsible for enforcing AML measures. The GOB also needs to take steps to ensure that the AML framework operates more objectively and less as a political tool. The GOB should take serious steps to combat corruption in commerce and government.

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